THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.2523 OF 2005

DATED 3rd March, 2006

BETWEEN

Kanam Reddy Tata Naidu and others

… Petitioners

and

Secretary, Department of Industries & Commerce, Secretariat

Buildings, Govt. of A.P., Hyderabad and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.2523 OF 2005

ORDER:

This writ petition is filed by ten persons belonging to the same family. They seek a writ of Mandamus declaring the action of the respondents in not reconveying the lands comprised in survey Nos.123/2D and 123/5 of Vadlapudi village, Gajuwaka Mandal of Visakhapatnam District as illegal, arbitrary and violative of Articles 14 and 300-A of Constitution of India. They also, in the alternative, seek direction to the respondents to issue fresh notification under the Land Acquisition Act, 1894 (for short, the Act) for acquiring the petitioners' lands as Visakhapatnam Steel Project (Acquisition of Land) Act, 1972 (for short, visakhapatnam Project Act),

under which the petitioners' lands were acquired, has been struck down by the Supreme Court.

The petitioners owned land admeasuring about Acs.80.00 in Vadlapudi and Tunglam villages of Gajuwaka Mandal. The land was acquired under Visakhapatnam Project Act. An award was passed on 26.11.1981 acquiring an extent of Acs.3.61 in survey Nos.123/2D and 123/5 of Vadlapudi village. The land was acquired for providing rail facilities for Visakhapatnam Steel Plant (VSP). It is the case of the petitioners that as the land was not used for providing rail facilities, the Government issued orders reconveying the property to the original owners, who developed the lands, obtained layout for house sites and some people have already constructed houses. The land of the petitioners, however, was not reconveyed. In 1993, the Government of Andhra Pradesh allotted the land to A.P.Civil Supplies Corporation (the Corporation, for brevity). When the Corporation tried to fence the land in survey nos.123/D and 123/5, petitioners 1, 2 and 6 herein filed writ petition being W.P.No.6274 of 1993 challenging the action of the Corporation in trying to raise structures on the land. The writ petition was dismissed based on the statement made by the Government that possession was already taken by the Corporation and that the land was transferred for a consideration. It is the further case of the petitioners that though the land was allotted to the Corporation, even after lapse of about twelve years, the godowns were not constructed and the land is kept vacant. Petitioners also alleged that the land is in their possession.

Respondents 1 and 2 have filed a counter affidavit opposing the writ petition. It is stated that the land of the petitioners was acquired and the compensation was paid to Kannamreddy Appalanaidu and others, who are the predecessors of title of the petitioners. Though, initially the land was acquired for providing rail facilities to VSP, subsequently, the land was allotted to the Corporation for construction of godowns in proceedings, dated 06.05.1992, issued by Special Officer (Land Acquisition), Steel Plant. The land was handed over on 18.06.1992 for public purpose. Therefore, the question of reconveyance of land does not arise. On a representation made by the petitioners, the second respondent submitted proposals for reconveyance of the land to the Special Officer and the same was rejected as the land was allotted for public purpose to the Corporation. This Court in W.P.No.6274 of 1993 also observed that when the land acquired for public purpose, the owners have no right to get back the land. The petitioners made a representation on 20.01.2005 and the second respondent by letter, dated 04.02.2005, rejected the request for reconveyance.

A.P.Civil Supplies Corporation, the third respondent herein, filed a separate counter affidavit. It is stated that after taking possession of the land from the District Collector, when the Corporation started construction of compound wall,
Smt K.Varahalamma and ten others filed W.P.No.6274 of 1993 and obtained orders of stay on 05.05.1993. The writ petition was dismissed on 11.02.2003 and thereafter, the third respondent obtained permission from the Head Office on 03.07.2004 for fixing boundaries and also issued tenders. A.K.Mallikarjuna is entrusted with the work of construction of compound wall/fencing and the construction of compound wall is in progress. While the work is under progress, some unknown persons

demolished the brick masonary wall, and a complaint being crime No.57 of 2005 was lodged on 11.02.2005 with P.S., Gajuwaka. The land was allotted to the Corporation for constructions of godowns for storage of essential commodities meant for public distribution system.

The learned counsel for the petitioners vehemently contends that the land of the petitioners and others was acquired for providing rail facilities, when a large number of survey numbers were not coming within the alignment providing for rail facilities, the Government reconveyed the land to some persons. But, the said benefit is denied to the petitioners, which is discriminatory and violative of Article 14 of the Constitution of India. Secondly, he submits that the second respondent in his proceedings, dated 06.05.1992, while allotting land to the Corporation imposed a condition that the Corporation should start construction of godowns within one year from the date of handing over possession. In spite of the same, the third respondent did not commence construction and therefore the allotment of land cannot be said to be for public purpose.

The learned Assistant Government Pleader for Revenue (Land Acquisition) placed reliance on the decision of the Supreme Court in **Northern Indian Glass Industries v Jaswant Singh** and **Government of A.P. v Syed Akbar**, and submits that when once the land is acquired after paying compensation, the erstwhile land owners have no right in the land and therefore they cannot seek any reconveyance of the land. He would also urge that even when the land is no more required for public purpose, it is competent for the Government to dispose of the land by public auction and the erstwhile land owners have no right to seek writ of Mandamus from the Court.

While allotting the land to the Corporation, it is no doubt true that the second respondent imposed a condition that the Corporation should commence construction within a period of one year from the date of handing over possession. It is the case of the third respondent – which is not denied by filing reply affidavit; that when they were about to start construction Smt K.Varahalamma and ten others filed W.P.No.6274 of 1993 and obtained orders of stay on 05.05.1993. The writ petition was dismissed on 11.02.2003; that is to say, from 05.05.1993 to 11.02.2003, the Corporation could not have commenced construction as there was stay of construction. Immediately thereafter, they commenced construction of compound wall. Therefore, there is no substance in the submission made by the learned counsel for the petitioners. Even otherwise when once the land is allotted to the Corporation for construction of godowns, such construction of godowns can be need based subject to availability of funds. When the land is allotted by Government for construction, it does not mean that the Corporation is under a legal obligation to construct all godowns in one year whether there is need for storage facility or not. Merely because the Corporation does not complete construction of godowns in the land allotted to the Corporation, the petitioners cannot claim any right for reconveyance.

It is now well settled that the land absolutely vests in the Government free from all encumbrances, when once an award is passed under the Land Acquisition Act.

When once the land vests in Government, the owner from whom the land is acquired cannot seek reconveyance and indeed, the Government cannot reconvey the land to the owner. In **Northern Indian Glass Industries** (supra) and **Syed Akbar** (supra), the Supreme Court reiterated the legal position. In the latter Judgment, the Supreme Court laid down as under.

> When the land is acquired under the Land Acquisition Act which is vested in the State Government free from all encumbrances, the question of reconveying the land as claimed by the respondent could not be accepted in view of the clear position of law stated in the decisions of the Court aforementioned. Whether the unused remaining land out of the acquired land was sufficient or not for the purpose of construction of Mandal Revenue Office could not be decided by the High Court. It was for the competent authorities to decide about the same.

For the above reasons, the writ petition is misconceived and is accordingly dismissed without any order as to costs.

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(V.V.S.RAO,J)

03.03.2006

pln

Crp

This civil revision petition is filed under section 115 of Code of Civil Procedure, 1908 (CPC) against the order of the learned Rent Controller, Rajahmundry in E.A.No.23 of 1997, dated 26.12.1998, whereby and whereunder the learned Rent Controller rejected the application filed by the petitioner, in which, it was claimed that the eviction order/decree in R.C.C.No.40 of 1998 is not valid and binding on the petitioner and further praying to recall warrant of delivery of possession.

The relevant facts are as follows. Surabatula Venkata Subba Rao filed a rent control case being R.C.C.No.40 of 1988 against respondents 4 to 8 herein for

eviction in respect of premises bearing door No.263/3 = 33-3-9, situated at Aparala street in Rajahmundry. During the pendency, the original petitioner died and OLRs respondents 2 and 3 herein were brought on record. It was alleged that respondents 4 to 8 were inducted as tenants in the petition schedule premises under Section 10(2)(i) and 10(2)(a) of A.P.Buildings (Lease, Rent and Eviction) Control Act, 1960 (Rent Control Act, for short). By order, dated 20.08.1996 an order of eviction was passed by the learned Rent Controller. Respondents 2 and 3 herein filed E.P.No.4 of 1997 and the learned rent Controller directed issue of warrant of delivery of possession directing the eviction of respondents 4 to 8 from the petition schedule premises bearing No.33-3-9.

The petitioner herein filed two execution applications being E.A.No.23 of 1997 and E.A.No.24 of 1997. The former was filed under Order XXI Rule 97 of CPC to hold that the decree in RCC NO.40 o 1988 is not valid and binding on the petitioner and to recall the warrant of .. The other E.A.was filed under Section 20(2) .. rent control act for grant of stay of the proceedings in E.P.No.4 of 1997. Before the Rent Controller the petitioner who is a third party to the proceedings contended that the deceased first respondent herein inducted the petitioner as tenant in respect of the premises bearing Door NO.3-4-32 on 11.11.1990 for non-residential purpose on a monthly rent of Rs.650/- that the deceased first respondent directed the petitioner to pay the property tax as he went to Hyderabad for treatment, that after the death of the first respondent, respondents 2 and 3 filed suit being O.S.No.177 of 1991 .. on the file of the Principal Senior Civil Judge, Rajahmundry for partition of the properties of the first respondent in which the petitioner was shows as second defendant, that he was paying rents to respondents 2 and 3 as directed by the Receiver appointed in O.S.No177 of 1991 and that the petitioner is continuing as a tenant in terms bearing No.32-4-32. He also further alleges that the petition schedule in RCC No.40 of 1998 being door NO.33-3-9 is nothing to do with the premises in the possession of the petitioner on 26.03.1997, respondents 2 and 3 to 5 along with the fifty others came with the Bailiff and tried to forcibly evict the petitioner from the schedule property. He also alleges that petitioners 2 and 3 in collusion that respondents 4 to 8 obtained collusive decree by playing fraud on the Court.

The application filed by the petitioner was opposed by respondents 2 and 3. Second respondent filed a counter affidavit asserting that the petitioner was inducted by the fourth respondent as sub-lessee without knowledge or consent of the first respondent, and that the RCC petition schedule premises No.32-4-32 after general revision in 1983-1984 was changed into 32-4-32 and therefore the petitioner being in possession of the petitioner schedule property is liable to be evicted. The parties led evidence by marking documents. The petitioner marked Exs.A.1 to A.18 and respondents marked Ex.B.1. On considering the evidence came to the conclusion that the petitioner was inducted as sub-lessee by the fourth respondent in respect of the property, which is schedule property in the main RCC and that door No.33-3-9 corresponds to door NO.32-4-32. While holding thus the petition was dismissed. Aggrieved by the same, the present civil revision petition is filed.

Though the application was filed under order 21 Rule 97 CPC, no submission is made before this Court regarding applicability of provisions of CPC. Be that as it is, Rule 23 of Rent Control Rules contains the procedure for executions of orders passed under the Rent Control Act. Sub Rule 7 of Rule 23 is relevant and reads as under.

Extract

The above provision contains two parts. If an execution re registered or obstructed by any person other than the person against whom an order of eviction was passed, the Rent Controller is required to hold summary enquiry. Such enquiry shall be into the facts of the case and if the Rent Controller is satisfied that the respondents… is without any just cause, he shall issue a warrant to evict the person by force and deliver the possession of the building to the person entitled for possession in pursuance of the order of eviction. Under second part of the provision, if the Rent Controller is satisfied that the residence is by a person (other than the Judgment debtor), who claims in good faith to be in possession of the building on his own account or on account of same person other than the Judgment Debtor, then the Rent Controller shall have to disallow the execution against the person resisting execution. It is no doubt true that enquiry to be conducted when an objection petition is filed is of summary nature. It does not, however, mean that the Rent Controller can ignore the settled principles of appreciation of evidence on balancing of probabilities.

It is the case of the respondents 2 and 3 that there was a general revision in Rajahmundry Municipality in 1983-1984 and premises No.32-4-32 in the possession of the petitioner is the same as door No.33-3-9 (door No.363/B) shown in the main Rent Control case. The rent controller accepted this conversion placing reliance on Ex.A.13, which is a copy of the plaint in O.S.No.177 of 1991 served on the petitioner, who was second defendant in the said suit. In Ex.A.13, old number was shown as 16/167 and present No.32-4-32. In the RCC No.40 of 1988, however, the predecessor in title of respondents 2 and 3 mentioned door No.263/B = 33-3-9. Respondents 2 and 3 m3ntioned door No.263/B = 33-3-9. The Rent Control Case was filed in 1988, whereas the suit being O.S.No.177 of 1991 was filed in 1991. If the old number 33-3-9 was changed as 32-4-32 in the general revision during 1983-1984, nothing prevented the deceased first respondent to show the premises in possession of the petitioner in the schedule to rent control case. This was crucial for an enquiry in an application under 23(7) of the Rent Control Act. The learned Rent Controller, however, gave undue importance to the report of the Amin, dated 24.03.1997, which is neither acceptable evidence nor such report was supported by the pleadings before the Court. Therefore, on balance of probabilities, the conclusion should be that the petition schedule property in the given rent control case and the petition schedule property in E.P.No.4 of 1997 do not have any similarity and in any event, the respondents 2 and 3 have failed to prove that both are the same.

For the above reasons, the civil revision petition must succeed and the same is accordingly allowed setting aside the order, dated 26.12.1998 in

E.A.No.23.01.1997 in E.P.No.4 of 1997 in R.C.No.40 of 1988 on the file of the Rent Controller (Principal Junior Civil Judge), Rajahmundry. The E.A.No.23 of 1997 accordingly stands allowed and the execution is disallowed against the petitioner herein.

The learned counsel for the petitioner, Ms.Ramachandra Rao, submits that the premises, which was let out to the petitioner is separate from the premises, which is subject matter of the main rent control case, and therefore, the learned Rent Controller ought to have disallowed the execution against the petitioner. He also submits that the petitioner was inducted as a tenant by the deceased first respondent and was receiving the rents regularly and the petitioner has nothing to do with the premises let out by respondents 1 and 3 in favour of respondents 4 to 8. **Per contra,** learned counsel for respondents 2 and 3, Sri Subhash Reddy, submits that the petitioner was inducted as a sub-tenant by respondents 4 to 8 and the number of the premises was changed and therefore, being a question of fact no interference is called for in the civil revision petition.

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(V.V.S.RAO,J)

03.03.2006

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